IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

7-ELEVEN, INC.,	§	
Plaintiff,	§ §	
	§	CASE NO. 3:08-CV-140-B
VS.	§	
	§	
	§	
PUERTO RICO-7, INC., THE MATTERA	§	
RESERVE, INC., and JOHN MATTERA,	§	
	§	
Defendants.	§	

MOTION TO DISMISS THE COUNTERCLAIM

Pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, the plaintiff/counterclaim defendant 7-Eleven, Inc. moves to dismiss the counterclaim for failure to plead fraud with sufficient particularity.

A proposed Order is attached.

Respectfully submitted,

/s/ James C. Rubinger
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Attorneys for Plaintiff 7-Eleven, Inc.

May 8, 2008

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Plaintiff,	§ 8	
Timitini,	8 §	CASE NO. 3:08-CV-140-B
VS.	§	
	§	
	§	
PUERTO RICO-7, INC., THE MATTERA	§	
RESERVE, INC., and JOHN MATTERA,	§	
	§	
Defendants.	§	

ORDER

This matter came before me on the motion of the counterclaim defendant 7-ELEVEN, INC. to dismiss the counterclaim for failure to plead fraud with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure. Having considered the motion, the opposition thereto, and the reply in support thereof, the Court determines that the motion is GRANTED. Accordingly,

IT IS HEREBY ORDERED that the counterclaim in this action is dismissed.

Entered this ____ day of May 2008 at Dallas, Texas.

Jane Boyle United States District Judge